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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,902	10/08/2003	John M. Cuckler	5490-000350	6373

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EXAMINER

SWIGER III, JAMES L

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/680,902	Applicant(s) CUCKLER ET AL.	
	Examiner James L. Swiger	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 26-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-9 and 11-16 is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, and 26-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 108/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claim 5 is objected to because of the following informalities: Line 11 of claim 5 reads "two sides holes" and it is suggested that it be changed to --two side holes--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, and 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Bastian et al. (US 5,769,854). Bastian et al. disclose a bone cutting instrument comprising a guide (32) that is removably attachable to bone and also having at least an axis, a rotatable mill (30) that is attachable to the guide and is pivotable at the point of attachment (86) and within an opening (80), wherein it is capable of lateral adjustment relative to the opening and is capable of being laterally affixed while in multiple planes along the track/rotation point. The opening is also substantially box-shaped (see end of mill portion 70), has a driven end (92), as well as a cutting portion (60). Due to the rotation, the mill may be in a first position or a second position (Figs. 2 and 5) laterally constrained relative to the opening. The mill is also capable of a sequence of positions as it rotates, and the final position is influenced and is determined by the wall (82) of the

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guide where the mill may rest upon in the final position. The final position is capable of being perpendicular. The apparatus also has affixation pins (54), to secure the cutting guide in place (Col. 3, lines 31-35). Bastian et al. further teach a bone-attachment flange (40) that is substantially parallel to the base with two guiding sides (see Fig. 5).

Claim Rejections - 35 USC § 103

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastain et al. '854 in view of Coleman (US 5,591,207). Bastian et al. disclose the claimed invention except for a rod with a groove or truncated grooves to prevent lateral sliding, or a bore. Coleman discloses a device that teaches a rod (200) having truncated grooves (202) to allow the rod to be set at certain locations (see Col. 6, lines 60-67), and also a bore (136) capable of use in securing purposes (121; Col. 6, lines 5-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Bastian et al. having at least a rod with truncated

grooves and a bore in view of Coleman to aid in fixation and placement of the mill in use of the device.

Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bastian et al. '854 in view of Dietz et al. (US 5,653,714). Bastian et al. disclose the claimed invention except for the capability of the mill to slide laterally relative to the mill in either the first or second position. Dietz et al. teach a cutting guide that allows for lateral sliding along a rod (28) and see Fig. 1, that would be capable of interfacing with a mill portion (see Fig. 7) and in a first (Fig. 7) and second position (Fig. 8) that allows the device to be securely oriented in a multitude of positions, preventing the need for multiple cutting apparatuses. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Bastian et al. having at least the capability of lateral movement along a rod in view of Dietz et al. to allow for optimal orientation of the mill in relation to the cutting device.

Allowable Subject Matter

Claims 5-9 and 11-16 are allowed.

Response to Arguments

Applicant's arguments filed 9/5/2006 have been fully considered but they are not persuasive. With regards to the claim amendments directed to a specific axis, particularly a lateral axis, examiner submits that a lateral axis may be drawn at least across the box cut formed by the guide, also allowing the rotatable mill to pivot around it in at least a plurality of planes. At least one of these planes would be perpendicular. It would also be able to be slidably adjustable relative to the sliding track (86) in a lateral

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fashion. Also for clarification, the flange to prevent the mill from moving would be substantially along this lateral axis. The flange may also be considered as the interface between 82 and 40.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

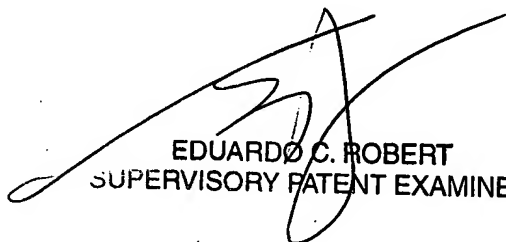
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLS



11/27/06



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER